IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 3405 of 2005()

CC.278/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBU

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PETITIONER: 3RD ACCUSED:

E.R. FRANCIS, S/O. E.K. RAPPAI,
IDAKKALATHUR HOUSE, PERINGANDOOR VILLAGE,
THALAPPILLY TALUK, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: COMPLAINANT & STATE:
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1. NALINI RAJAN, W/O. RAJAN NAMBIAR,
MANIYERI HOUSE, KAKKAYANGAD VIA, PERAVOOR,
KANNUR DISTRICT, NOW RESIDING AT CHANDROTH HOUSE,
KAKKENGAD, MUZHAKKUNNU P.O., THALASSERY TALUK.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.RAMESH CHANDER
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 3405 OF 2005

Dated this the 21st day of November 2006

ORDER

The petitioner is the accused in C.C. No. 278/2004 in the court of Judicial First Class Magistrate, Koothuparambu with respect to the ffence under section 420 r/w 34 IPC. It is the case of the petitioner/accused that he had instituted Annexure 2 proceedings against the complainant under section 138 of the Negotiable Instruments Act and that it is as a repraisal that the complainant has initiated the present proceedings. According to the petitioner, after receipt of notice vide Annexure-1 the complainant forged Annexure-3 agreement wherein it is mentioned that the complainant borrowed a sum of Rs. 2,00,000/- from one Biju and thereafter she repaid the amount. But the blank cheque entrusted as security towards her account No. 01190033985 has not been returned as the same was stated to be lost and that on account of the loss of the above cheque leaf if any loss is caused to the complainant she will be entitled to proceed against the above person by name Biju which mentioned in Annexure -3. It is pointed out in particular that in the notice issued by the petitioner preceding the section 138 proceedings the petitioner had

only mentioned the account number and not the cheque number. Hence evidently after receipt of the above notice Annexure 3 agreement has been forged. In the complaint also only the account number is mentioned and thereafter the proceedings have been initiated against the petitioner one Biju and another person vide Annexure 4 alleging offences under section 420 I.P.C.

2. Ofcourse Annexure 4 complaint has been filed immediately after the filing of Annexure 2 proceedings under section 138 of the N.I. Act. The contention of the petitioner requires consideration. The absence to mention the cheque number in A3 agreement and the fact that cheque number is not mentioned in A1, lawyer notice issued by the petitioner is a relevant fact if not coincidence. All the same, I find that there can be no specific finding on the point in the absence of further evidence.

In the circumstances, I find that the proceedings cannot be quashed at this stage. All the same, the petitioner may apply for discharge before the trial court at the appropriate stage and the court shall consider the same. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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